IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/07/2004

CORAM

THE HON'BLE MR. JUSTICE V. KANAGARAJ
and
THE HON'BLE MR. JUSTICE S. ASHOK KUMAR

Habeas Corpus Petition No.390 of 2004

Vasantha @ Arumbu .. Petitioner

-VS-

1. The District Magistrate,
and District Collector,
Perambalur District.

2. State, rep. by its
Secretary to Government,
Prohibition & Excise
Department,
For St. George,
Chennai - 9.

3. The Inspector of Police,
Keezhapazhuvur Police Station,
Perambalur District. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioner : No appearance

For respondents : Mr. Abudu Kumar Rajarathinam
Government Advocate (Crl. side)

:O R D E R

(Order of the Court was delivered by V. KANAGARAJ,J.)

The daughter of the detenue is the petitioner herein. She has come forward to file the above petition praying to issue a Writ of Habeas Corpus, calling for the records relating to the order in Cr.M.P.No.8 of 2004 dated 14.2.2004 passed by the first respondent herein, quash the same as illegal and further direct the respondents to produce the detenue, viz., Susila, W/o.Lakshmanan, who is now confined in the Special Prison for Women, Trichirapalli, before this Court and set her at liberty forthwith.

2. The detenu has been detained on the ground that she was a Bootlegger under the relevant provisions of Tamil Nadu Act 14 of 1982.

3. Heard Mr. Abudu Kumar Rajarathinam, learned government advocate on the criminal side with no representation made on the part of the petitioner. Learned Government Advocate on the criminal side reports that there are six adverse cases registered against the detenue.

4. On perusal of the records, it is comes to be known from page 14 of the typed set of papers that the detenue has filed a bail application before the Court of Sessions Judge, Perambalur in Cr.M.P.No.500 of 2004 and the same was dismissed on 23.2.2004. But, in the grounds of detention, this bail application is not even mentioned. However, in para.5 of the grounds of detention, the detaining authority has stated that 'there is an imminent possibility of the detenue filing a bail petition before the same Court or in the superior court'. Therefore, it is clear that it is a case of glaring example for nonapplication of mind on the part of the detaining authority, while passing the order of detention and no mention need be necessary that the order of detention becomes vitiated in law and the preventive order of detention becomes liable to be quashed.

5. This Court's attention is also drawn to an earlier order of the Division Bench of this Court on a similar point dealing with the same in para.5 of the said order dated 16.6.2004 made in HCP. No.214 of 2 004, wherein it is held: "In C.CHITHAMBARA SELVI v. STATE OF TAMIL NADU REP. BY ITS SECRETARY, PROHIBITION & EXCISE DEPARTMENT, FORT ST. GEORGE, MADRAS-9 AND ANOTHER reported in 1998 (2) MWN (Cr.) 326, a Division Bench of this Court has held that failure to take notice of the pendency of the bail application on the part of the detaining authority while passing the impugned order of detention amounts to non-application of mind, as the detaining authority was of the opinion that the detenu had not filed any bail application." However, there is a minor difference that in the case cited above, the detaining authority had stated that the detenu did not file any bail application, while the fact remains that the detenue had filed a bail application. But, in this case, the bail application was already filed and got dismissed, which was not mentioned in the grounds of detention. Excepting this minor difference, all the other propositions held in the case cited above squarely applies to the case in hand, and therefore, it is also a case that has to be held bad for nonapplication of mind on the part of the detaining authority leading to the order of detention becoming vitiated and hence the following order : In result, (i) the above Habeas Corpus Petition is allowed; (ii) the detention order in Cr.M.P.No.8 of 2004 dated 14.2.2004 passed by the first respondent herein is quashed; (iii) the detenue is directed to be set at liberty forthwith unless her detention is required in any other case.

Index:Yes
Internet:Yes
Gs.
To
1. The Secretary to Government of Tamil Nadu,
Prohibition & Excise Department,

Fort St. George,
Chennai - 9.

2. The District Magistrate and District Collector,
Perambalur District.

3. The Inspector of Police,
Keezhapazhuvur Police Station,
Perambalur District.

4. The Superintendent of Police,
Special Prison for Women,
Trichirappalli.

5. The Joint Secretary to Government,
Public (L & O),
Fort St. George,
Chennai - 9.

6. The Public Prosecutor, High Court, Madras.